

Before Commissioners: Keith R. Henley, Chairman
Rich Kowalewski
Jack Shriver

) Docket No..
) 141,975-u

Now, the Matter of the General Investigation into the resale of local telephone service, comes before the State Corporation Commission of the State of Kansas (Commission). Being duly advised of all matters of record, the Commission finds and concludes as follows:

1. On May 11, 1984, the Commission initiated an investigation into the resale of local telephone Service (resale, shared tenant service (STS), Of local service resale,). Technical hearings were held in the matter on July 18 and 19, 1984. On December 11, 1984, the Commission issued an order prohibiting resale of local telephone service to the public generally, but allowing transient resale to continue in its present form. The Commission allowed resale of local telephone service to continue in situations involving another overriding legal relationship between the parties, pending further investigation. The Commission also determined further investigation into the sharing of local service was necessary.

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UTILITIES DIVISION ON

Telephone Company's (Southwestern Bell) shared use tariffs. The Commission determined shared tenant service arrangements were beneficial to various customers having access to those arrangements. However, no reliable data was available to determine whether such arrangements would detrimentally affect the public. Therefore, the Commission allowed a limited number of non-partitioned, STS arrangements for the purpose of a year-long experimental study to collect data on the impact of such arrangements. The Commission decided to accept applications of those desiring exceptions to the shared US8 tariffs prohibiting local service resale. Existing STS arrangements using non-partitioned switches were also ordered to apply to the Commission for local service resale authorization. Parties receiving permission to resell local service would be allowed to continue transacting business at the end of the trial period, regardless whether the Commission determined public detriment results from local resale service and should be prohibited.

The Commission ordered that during the trial period, revenue loss, stranded investment, quality of service, and need for provider of last resort resulting from STS operations should be tracked and documented. Likewise, the Commission determined the impact of STS on local exchange company planning and forecasting, use of existing inside wire by STS providers in retrofit situations and access to inside wire by the local exchange companies should also be documented. The Commission directed usage to be measured on all trunks in STS arrangements and non-STS arrangements in order to compare the STS and non-STS usage. Finally, no applications were required for STS arrangements using partitioned switches. However, for purposes of comparison, the Commission wanted to be informed of the number of partitioned Switches installed during the experimental period.

3. Four existing STS providers applied for and were granted an exception to the shared use tariff for purposes of resale local service. Eight additional STS applications were granted for STS systems not yet in service but which were anticipated to be in operation at the onset or shortly after the onset Of the trial period. The following STS arrangements were granted: Benedictine College, Atchison; C.B. Self and Company, Overland Park; Hutchinson Community College,

Hutchinson; Kansas City Medical Services, P.A. Overland Park: Kroh Telecommunities, Overland Park; Mid-America Nazarene College, Olathe; Omni Center, L.P., Wichita; St. Francis Hospital and Medical Center, Topeka; St. Francis Regional Medical Center, Wichita; The Law Company, Inc., Wichita; Wesley Medical Center, Wichita: Wichita Airport Authority, Wichita. Three entities, St. Francis Regional Medical Center, Kroh Telecommunities, and Benedictine College chose not to offer STS after being granted authority. Two entities, Epic Center and Epic Business Services, both of Wichita, filed for but were denied authority to provide STS because the applications were received after the STS trial period had ended.

4. Southwestern Bell conducted a study of STS arrangements and filed its report with the Commission on July 8, 1987. Tab I of the report contained the *study* results and Southwestern Bell's conclusion. Tab II of the report contained supplemental information prepared by Southwestern Bell's consultant/witness in previous STS proceedings. The consultant's report contained, inter alia, the consultant's review of STS proceedings, the consultant's review of the Commission's findings, the consultant's analysis of the STS industry from 1985 to the present, the consultant's forecasts regarding the future of STS and the consultant's general conclusions and observations of STS in Kansas.

Southwestern Bell's conclusions characterized the trial as one in which a small number of institutional and commercial PBX users sought and received approval to provide resale of local telephone service to relatively few tenants thus not having a substantial impact on Southwestern Bell, Kansas ratepayers or the public in general. Southwestern Bell stated the results of the resale trial were inconclusive. Local resale on the scale provided during the trial period did not produce a significant benefit or, based on trial data, a significant detriment to Southwestern Bell. Southwestern Bell concluded the trial has satisfied most if not all of the current demand in Kansas for similar arrangements in light of the events in the STS industry.' Tab I at Page 18. However, Southwestern Bell's conclusions recognized the potential for new STS does exist with the attendant financial or service risks for Southwestern Bell and ratepayers.

Southwestern Bell recommended the Commission continue the general prohibition of resale to the public. Southwestern Bell concluded 'any benefit of STS arrangements should be fully available to tenants through the use of a partitioned shared tenant switch without allowing resale or sharing of local service.' Tab I at page 18. furthermore, Southwestern Bell recommended local service resale should continue to be prohibited because there is little to no demand for it by underlying end users. Southwestern Bell acknowledged, pursuant to the few unique circumstances in Kansas, allowed sharing arrangements have been and will continue to be acceptable, However, Southwestern Bell recommended further expansion of commercial STS operations, where resale of local service involves use Of a non-partitioned switch, should not be allowed.

5. On September 30, 1988, the Commission established a 45-day comment period because Southwestern Bell's report ultimately made recommendations to the Commission based on study results and included supplemental information from Southwestern Bell's Consultant/witness in the previous hearings in this docket. The Commission determined it would be appropriate to provide interested parties the opportunity to file comments on Southwestern Bell's STS report and reply comments to Southwestern Bell's comments.

6. The Commission received written comments from the United Telephone Company of Kansas (United) and the Wichita Airport Authority (WAA). Comments received from United indicated United has not to date received any requests from STS providers for service. However, United stated, that given the technological advancements in the telecommunications industry, future expansion of STS to all local exchange carriers is inevitable. Thereafter, United responded to the various topics discussed in the STS study, United stated that local exchange companies (LECs) must be fairly compensated for providing STS connectivity. Specifically LECs should be allowed to charge a cost that recovers the fixed portion of access (the local loop) on a flat rate basis and the variable cost (central office switching) on a usage sensitive basis. United did not support the position that LECs should be the provider Of last resort in an STS environment. However, in a competitive environment, LECs should be compensated for facilities required to

provide their service to the end users when existing facilities, previously downsized because of the existence of an STS facility, have to be retrofitted as a result of an STS provider exiting the market. Likewise, LECs should be compensated with regard to any idled investment resulting from the STS arrangement. Furthermore, LECs should be obligated to provide the same quality of service standards to STS providers as to any other end user. United supported regulation creating an environment of competition where economically and technologically justified, but at the same time preventing unnecessary financial hardships to LECs. LECs should not be required to act as an overseer of the STS provider because the relationship existing between the STS provider and the end user is a private one. Therefore, United stated STS providers should be subject to minimal regulations consisting mainly of receiving a certificate to operate.

The WAA objected to statements made by Southwestern Bell relative to Southwestern Bell's revenue from the WAA. The WAA stated review of the representative detail of charges from Southwestern Bell for the WAA indicated Southwestern Bell received \$5,637.90 in monthly revenues rather than the \$3,810 previously reported by Southwestern Bell. Likewise, the WAA questioned Southwestern Bell's model regarding monthly revenue without resale. The WAA. tenants that left the STS system have been replaced by other tenants and the system has remained stable at approximately 500 stations. The WAA stated, "these two serious revenue miscalculations in this projection raised serious questions about the viability of the entire study of Southwestern Bell". Secondly, the WAA asserted Southwestern Bell is continuing to duplicate facilities and create its own stranded investment in light of the Commission's order to the contrary. The WAA cited a case involving Avis Car Rental administrative offices constructed at Wichita MidContinent Airport wherein Southwestern Bell placed a 25 pair cable in a location even though the tenant had been on the WAA system since the STS cutover and there was no reason for Southwestern Bell to serve the tenant. Likewise, the WAA referred to Tab I, page 15 of the study wherein Southwestern Bell referred to the inside wire at Jabara Airport. The WAA stated that Southwestern Bell's statement, the WAA was using Southwestern Bell's inside wire at Jabara was

incorrect and would be in violation of the WAA's own request for proposal contract with its customer premise equipment vendor. Finally, the WM contended supplemental information provided by Southwestern Bell's consultant/witness, Mr. Leininger, had no relevance in this docket. The WAA stated while Mr. Leininger's information may reflect a growth in the industry, it was premised on speculation and questionable predictions about the development of the industry. The WAA concluded their STS arrangement was working well.

7. On December 21, 1989, staff provided a memorandum to the Commission. Staff's review of the Southwestern Bell Study indicated there was no significant idled investment, no demands on Southwestern Bell to be the provider of last resort, no impact on Southwestern Bell's planning and forecasting and no significant differences between STS and non-STS systems in quality of service. In addition, the STS systems demonstrated a higher utilization of trunking (more messages carried per trunk) than non-STS systems. Furthermore, no significant problems or revenue impact resulted from inside wire replacement/duplications in retrofit situations.

RELEVANT LAW

8. The Commission is given full power, authority and jurisdiction to supervise and control the telecommunication public utilities doing business in Kansas and is empowered to do all things necessary for the exercise of such jurisdiction. K.S.A. 86-1,187 et seq. The Commission's jurisdiction extends to determine the extent competition is allowed to exist in the regulated intrastate telecommunications market in Kansas. K.S.A. 66-1,187 et seq.

FINDINGS AND CONCLUSIONS

9. The Commission finds that notice to the utilities and the subsequent 45-day comment period was proper. Thus, the Commission has jurisdiction to determine this matter.

10. As previously stated in this docket, the Commission's position is not to promote competition for the sake of competition but rather to allow competition when it is consistent with the Commission's statutory mandate and in the public interest. (Order, August 23, 1995, p.11)

The Commission finds and concludes the trial results did not demonstrate a public detriment resulting from the resale of local telephone service which would outweigh the public benefit to customers that can take advantage of such arrangements. Therefore, the Commission finds resale of local telephone service involving non-partitioned switches, otherwise known as STS, is appropriate and will be allowed in situations where another overriding legal relationship exists between the parties, such as a landlord/tenant relationship. The Commission finds that full certification of STS providers is not appropriate but will require resellers of local service to file applications describing the specified area, building or complex to be served, for Commission approval. The Commission retains discretion to determine the appropriateness of the applications on a case-by-case basis. Such determinations may include but are not limited to the following guidelines:

a. Common property ownership provisions generally shall continue to prevail as set Out in the STS trial and that a common overriding legal relationship should exist between the parties (providers and tenants).

b. STS generally shall be restricted to office/residential complexes and shall not generally be available to clusters of individually owned homes or businesses.

c. The Commission may exercise discretion in limiting the physical size or scope of a STS project. STS systems must conform to standards equivalent to those used in the industry to engineer a single user PBX of similar size and circumstances. Such standards shall be incorporated into the service agreements entered into by the local exchange companies and STS providers.

d. The Commission may request any additional information from the STS provider as it deems necessary. This information may include, but is not limited to: Copies of contracts for service, rate sheets. system configuration details, customer (tenant) notice, customer (tenant) billing information.

e. The local exchange company must remain as a provider of last resort. STS providers are

required to notify the local exchange company of the provider's intent to cease operating or intent to cease providing STS. STS Providers are required to notify customers of the customer's option to obtain a direct telephone line from the local exchange company at any time. Likewise, STS providers are required to notify Customers that if they desire to change to local exchange company service, or if STS operations cease, such local exchange company services may not be immediately available.

With regard to duplication of facilities, the Commission finds that STS providers shall be required to grant the LEC access to the provider's intra building cabling and wiring, if a tenant requests service directly from the LEC, in order to avoid the need for placing duplicate facilities. This requirement shall be set out in the service agreement between the LEC and STS provider. A compensatory rate shall be paid by the local exchange company for such access.

Existing STS providers previously participating in the experimental phase of this docket, identified in paragraph 3, are grandfathered and shall not be required to file new applications to provide shared tenant service. However, such existing providers may apply for modification of the restrictions placed on them during the trial to the extent the providers may determine such restrictions are no longer necessary.

The Commission retains jurisdiction to revisit the STS criteria or conditions, on the Commission's own initiative or upon complaint. Finally, the Commission retains jurisdiction to determine risks to customers (tenants) on a case-by-case basis and place further conditions on STS providers to protect the public interest.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT: the Commission authorizes resale of local telephone service pursuant to the conditions established for the provisions of such service as set forth in the above order.

The parties have fifteen days (plus three days if service of this order is by mail) from the date this order is served in which to request rehearing on any matter decided herein.

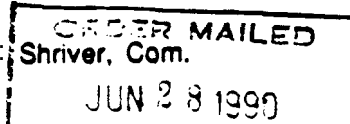
The Commission retains jurisdiction of the subject matter and parties for the purpose of

entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

DATE: JUN. 28 1990

Henley, Chmn.: Kowalewski, Corn.: Shriver, Com.




Judith McConnell
Executive Director

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